

# ICN Advocacy Handbook

## Approaches to Identify Policies for Competition Assessment<sup>1</sup>

### ICN Advocacy Working Group

*The mission of the Advocacy Working Group (AWG) is to develop practical tools and guidance, and to facilitate experience sharing between ICN member agencies, to improve the effectiveness of ICN members' competition advocacy activities.*

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### Introduction

A primary goal of competition agencies is to promote competitive markets. Most competition agencies do this through two major mechanisms: enforcement and competition advocacy. The goal of competition advocacy to government is to enhance understanding of the competitive process and provide a framework for thinking about public policy issues from a competition perspective.

Thus, an important part of the competition advocacy work is to provide input to policymakers by evaluating the competition impact of a given policy measure and making recommendations to help mitigate negative effects.

However, the amount of laws and regulations that constitute the framework for business is overwhelming. So, how do competition agencies identify rules and regulations that may hinder the efficient functioning of competition in markets? This note focuses on various approaches to identify policies for competition assessment.

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<sup>1</sup> The AWG co-chairs would like to warmly thank all agencies contributing to this note.

## Background

A competitive environment for economic activities is created by a framework encompassing the set of laws, regulations and policies that businesses operate within. The various elements of this framework are implemented in order to address market failures and achieve other important policy goals for society. However, law and regulation may also have unnecessary, disproportionate, or unanticipated adverse effects on competition. Such adverse effects can occur for instance by limiting the number or range of suppliers, the ability of suppliers to compete, their incentives to compete, or by restricting exit. Elements of framework provisions can also limit competition by restricting choices and information available to customers.<sup>2</sup>

There are various ways to identify rules and regulations that may hinder the efficient functioning of competition in markets. The approaches to identify candidate provisions for assessment varies from the least resource-intensive like responding to changes in existing or proposed new laws and regulations in a public hearing, to more extensive and resource consuming screening, for instance like in Portugal's Competition Assessment Review by the Organization for Economic Cooperation and Development (OECD) where a list of 905 pieces of sector-relevant legislation was collected for transportation only.<sup>3</sup>

However, most agencies do not have the resources and/or mandate to conduct broad screenings like this. Consequently, if competition agencies only rely on responding to public hearings or information on candidates that is brought to the agency's attention in a more *ad hoc* manner, many pieces of sector-relevant legislation that may restrict competition would go under the radar.

This report presents input from ICN Advocacy Working Group members on approaches to identify candidate provisions for competition assessment.<sup>4</sup> The emphasis has been, particularly, to identify *innovative* approaches to *ex officio* identification of candidates for competition assessment, in line with the focus of the work of the ICN Advocacy Working Group for 2018-2020.

The report complements previous work by the AWG on Competition assessment, i.e. *Recommended Practices on Competition Assessment (2014)* and *Framework of Competition Assessment Regimes (2015)*.

Before alluding to how to identify regulatory candidates for assessment of potential negative impact on competition, the concept of competition assessment will be briefly explained.

## What is Competition Assessment?

A *competition assessment* occurs when a competition agency or another government body evaluates the competitive effects of a proposed or existing policy. Competition assessment is a key tool in promoting a competition-friendly legal and regulatory environment and a critical factor in building a strong competition culture. Being well placed to assess how existing and proposed laws and legislation may restrict competition, competition agencies can provide valuable input to policymakers by evaluating the competition impact of a given policy measure and making recommendations to help mitigate those effects.

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<sup>2</sup> See <https://www.oecd.org/competition/assessment-toolkit.htm>

<sup>3</sup> <https://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Highlights-ENG.pdf>

<sup>4</sup> This was a topic for a December 2018 AWG Teleseminar, one of the issues explored at the AWG Workshop in Kyiv as well as one of the break-outs at the 2019 ICN Annual Conference.

The assessment can either be at the policymakers' request, required by law or at the competition agency's own initiative (*ex officio*). Based on the competition assessment, policymakers will be better informed regarding the policy's likely impact on competition, consider to what extent the restrictions on competition are justified, and assess whether the intended public policy goal can be achieved in ways less restrictive to competition. By offering policymakers expertise regarding the potential costs of restrictions on competition, competition agencies raise awareness among policymakers and elevate competition as a consideration alongside other public policy goals.

The typical stages of a competition assessment are: i) identify candidates for assessment, ii) identify potential competition distortion caused by the provision, iii) investigate policymakers' objectives for each provision, and finally iv) develop recommendations for the provisions found to restrict competition, provided less restrictive alternatives can be found.

The OECD has developed a Competition Assessment Toolkit<sup>5</sup> for government bodies, that can be used to identify and eliminate barriers to competition by providing a method for identifying unnecessary restraints on market activities and developing less restrictive alternatives that still achieve government policy objectives.

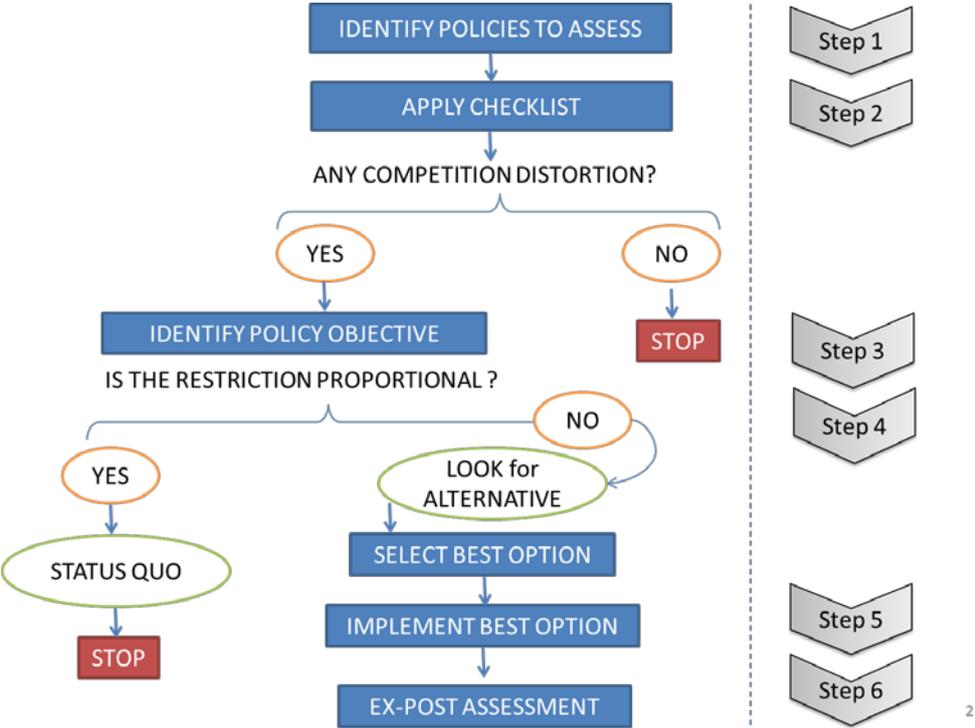


Figure 1 Competition Assessment Process (Source: OECD: Presentation by Ania Thieman at ICN AWG Workshop in Kyiv, 1 March 2019.)

Figure 1 above depicts the process of competition assessment. The first step is to identify policies for assessment; the second is to apply the "checklist". The checklist will be briefly presented in the last part of this note.

<sup>5</sup> See <https://www.oecd.org/competition/assessment-toolkit.htm>

## How to Identify Policies for Assessment

The amount of laws and regulations that constitute the framework for business is overwhelming. However, there are several ways to identify rules and regulations that may hinder competition in markets. The approaches to identify candidate provisions for assessment varies from the least resource intensive, like assessing and responding to changes in existing or proposed new laws and regulations in a public hearing, to more extensive and resource consuming approaches like screening.

The major sources for candidates to competition assessment are listed below:

- Reactive - *ex ante*
  - o Public hearings/ consultations for new laws and regulations
    - Introduction of new laws and regulations
    - Amendments to existing laws and regulations
- Ex officio intelligence - *ex post*
  - o Screening
  - o Contact with and input from industry associations (proactive outreach)
  - o Contact with regulators, other branches of government or law makers (proactive outreach)
  - o Intelligence from news, mass and/or social media
  - o Whistleblower (tip-off) function
  - o Contests
  - o Surveys

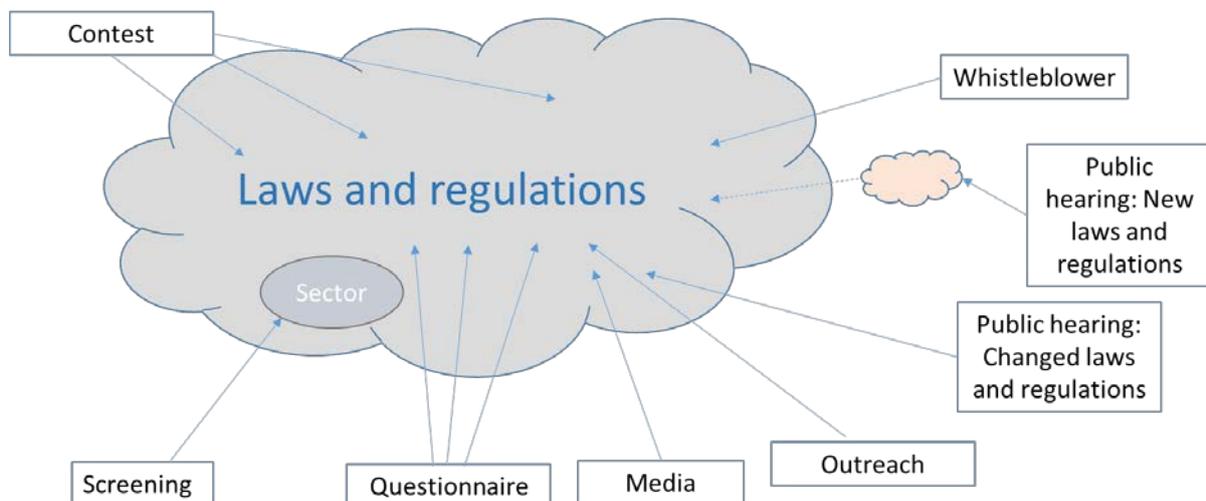


Figure 2. Approaches to identify policies for competition assessment

These various approaches have different strengths and weaknesses. Some approaches are very resource demanding but capture most of the relevant regulations for a particular sector. Others are less resource intensive, but the risk is that highly relevant regulations - from a competition point of view - in important sectors, are missed out. The various approaches will be alluded to below.

### Screening

The screening methodology consists basically of three activities:

1. Select a sector for analysis
2. Identify relevant laws and regulations

### 3. Identify potential regulatory restrictions in the relevant legal texts

Selection of the sector for analysis will typically be according to criteria like the sector's importance to the economy and the importance of the sector to the consumers. Sectors and business activities can be selected and defined more precisely through using the Nomenclature of Economic Activities (NACE), for example, which is the European statistical classification of economic activities, or the United Nations' International Standard Industrial Classification (ISIC). These classification schemes group companies and organizations according to their business activities.

After selecting the sector for analysis, several resources can be used to identify relevant laws and regulations; for example, online databases with legal texts and consultations with representatives of business and sector regulators. When relevant laws and regulations are identified, the next step is to apply the checklist depicted in Figure 2 below.

For the competition assessment project in Portugal, the OECD carried out a thorough and independent policy assessment to identify rules and regulations that might hinder efficient competition in the market. Based on the Competition Assessment Toolkit, the project team, formed by competition economists and lawyers from OECD and the Portuguese Competition Authority, reviewed existing legislation and regulations in the selected sectors and proposed pro-competitive changes. More than 3000 relevant laws and regulations were identified<sup>6</sup>, and two sectors were prioritized: transport and self-regulated professions. For transport, the team analysed 904 legal provisions and identified 485 as being harmful to competition and the economy. Subsequently, the study concluded with 417 detailed recommendations for regulatory changes.<sup>7</sup>

Yet another example is the competition assessment of laws and regulations in Mexico, which purpose was to improve competition in two sectors of the Mexican economy, medicines and meat products, through the removal of regulatory barriers.<sup>8</sup> For the two sectors, the work led to the identification of 176 regulatory restrictions found in the 228 legal texts selected for assessment. In total, the report made 107 specific recommendations to mitigate harm to competition.

The use of screening can also be found in the *Miscellaneous of Regulatory Obstacles to Competition: analysis of state-level regulations*<sup>9</sup>, a project from the Mexican Federal Economic Competition Commission (COFECE). This effort was aimed at advocating for pro-competitive state-level legal frameworks by performing a systematic review of laws and regulations in all 32 Mexican states. The document identifies regulatory obstacles that could affect competition in five different areas of great relevance for the economic activity: agriculture, public procurement, public transport, urban development and professional practice. As a result, potential areas for regulatory reform from a competition perspective are identified.

The screening methodology is an effective and comprehensive way to identify candidate provisions for competition assessment. However, this approach is also beyond the reach for most agencies given their limited human and financial resources, legal mandates/ obligations and prioritization policy.

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<sup>6</sup> OECD Presentation by Ania Thieman at ICN AWG Workshop in Kyiv, 1 March 2019

<sup>7</sup> See <https://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Highlights-ENG.pdf>

<sup>8</sup> See <https://www.oecd.org/daf/competition/Competition-Assessment-Review-Mexico-2018-Highlights.pdf>

<sup>9</sup> Document available in Spanish at [https://www.cofece.mx/cofece/images/Promocion/Miscelanea\\_Estatal\\_210916.pdf](https://www.cofece.mx/cofece/images/Promocion/Miscelanea_Estatal_210916.pdf)

## Public hearings/ consultations

Public hearings regarding new laws and regulations or changes in the existing legal and regulatory framework, are maybe the most important source to identify laws and regulations that might potentially restrict competition. In such hearings, the agency can present the findings of its assessment, and propose less restrictive alternatives to competition in order to achieve the policy goals.

In many jurisdictions, such consultations are a legal requirement for introducing and/or amending laws and regulations. For instance, in Sweden, the Swedish Constitution sets out an obligation for the Government to collect information and opinions from relevant authorities in the preparation of government affairs – for example during the legislative procedure. The government therefore refers legislative proposals that are relevant to the Swedish Competition Authority's (SCA) field of activities. The SCA is required to respond to all such referrals from the government.<sup>10</sup>

Admittedly, competition advice is most useful and has most impact in the initial stage of policy formulation.<sup>11</sup> Even though the chances of success, in convincing lawmakers to make significant amendments to the proposal at a later stage are smaller; a carefully crafted media strategy could increase the chances of influencing the final version of the regulations.

Elements in a media strategy can be, e.g., issuing a press release with clear statements -making it easier for journalists to develop editorial material, write op-eds for publishing at the same time as the hearing statement is being conducted, giving a media-outlet exclusivity for previous publication of both the press-release hearing statement and to increase attention to the concerns raised in the hearing statement using social media.

An innovative approach for raising attention to hearing statements is used by the Norwegian Better Regulation Council. The Council is an arms-length oversight body which issues advisory statements to proposals at the stage of public consultation. After assessing the extent by which the proposals raise barriers to entry<sup>12</sup>, the Council uses a “traffic light system” in which red indicates a severe concern that the proposal will result in burdens for businesses.

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<sup>10</sup> See [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_FrameworkCompetitionAssessmentRegimes.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_FrameworkCompetitionAssessmentRegimes.pdf)

<sup>11</sup> See

[https://webarchive.nationalarchives.gov.uk/20140402165631/http://oft.gov.uk/shared\\_oft/reports/Evaluating-OFTs-work/oft866.pdf](https://webarchive.nationalarchives.gov.uk/20140402165631/http://oft.gov.uk/shared_oft/reports/Evaluating-OFTs-work/oft866.pdf)

<sup>12</sup> See <https://regelradet.no/about/members-mandate-organisation-the-secretariat/>

## Uttalelser

Her finner du alle Regelrådets uttalelser til høringsforslag som har kor næringslivet. Nedenfor kan du filtrere på myndigheten som har sendt **I** (avsender) og Regelrådets vurdering.

Avsender (Alle) ▼	Regelrådets vurdering (Alle)
Søk etter uttalelse	
 Landbruks- og matdepartementet <a href="#">Markedsbalansering</a>	28. februar 2020
 Mattilsynet <a href="#">Forslag til ny dyreholdforskrift</a>	18. februar 2020
 Finansdepartementet <a href="#">Endringer i hvitvaskingsregelverket</a>	5. februar 2020
 Finansdepartementet <a href="#">NOU 2019: 18 Skattelegging av havbruk</a>	4. februar 2020
 Finansdepartementet <a href="#">Skattelegging av vannkraftverk</a>	20. desember 2019

Figure 3. Traffic light system used by the Norwegian Better Regulation Council. Each hearing statement ('Uttalelser') issued by the Council is marked by red, yellow or green, indicating degree of concerns relating to burden on business from new or altered regulations

Some agencies also have an *ex post* evaluation strategy to measure the extent to which the views submitted in the hearing statement had an impact on the outcome. Such *ex post* evaluation can be important for learning purposes and to improve future advocacy work as well as measuring the effects of the agency's advocacy activities.<sup>13</sup>

### Consultations with the business sector, consumers and third-party experts

Consultations with the business community are also an important source for information, for instance in relation to market studies or inquiries, although information obtained from the business/consumers should be carefully reviewed and verified if needed. In addition to a source for identifying potential regulations restricting competition, such consultations can also be important for identifying less restrictive options, and to assess the feasibility of alternatives.

For instance, in June 2018, Japan's Fair Trade Commission (JFTC) published a survey report on the mobile communications market: *"Issues concerning Competition policy in the Mobile Market*

<sup>13</sup> For instance, in 2007, the U.S. Federal Trade Commission (FTC) prepared a model for evaluation wherein it would gauge the extent to which the FTC's advocacy program influenced policymaking. The evaluation focused on instances in which the FTC sought to affect a particular policy outcome, rather than assessing advocacy outputs (e.g., number of advocacy actions) or inputs (e.g., resources devoted to advocacy). According to the evaluation, 94% of the respondents said that the FTC comment was considered and 54% of respondents (and 79% of those who had an opinion on the question) said the FTC comment influenced the outcome. See the ICN Advocacy Working Group Toolkit, Part I: Advocacy process and tools for more information: [https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_Toolkit1.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_Toolkit1.pdf)

(FY2018).<sup>14</sup> There were concerns related to the level of competition in the mobile communications market, where three MNOs' (Mobile Network Operator) market shares were about 90 per cent of the mobile communications market in Japan. In order to identify regulations which may restrict competition, the JFTC interviewed businesses and experts and published a report with recommendations to the Ministry of Internal Affairs and Communications (MIC) for amending regulations for a more competitive environment for MVNOs (Mobile Virtual Network Operator). An important perspective behind the recommendations was the need to design regulations in which MNOs are incentivized to reduce interconnection charges and actively deal with the MVNOs so that these can effectively compete with MNOs. Among the proposals were also measures to enhance transparency for evaluating interconnection charges, and to secure predictability of trends for interconnection charges.

## Questionnaire

Questionnaires can be very effective to identify laws and regulations restricting competition. However, this tool can be relatively resource demanding. Respondents who devoted time and effort to answer questionnaires expect their inputs to be carefully considered and followed up. If they perceive that their inputs are not being considered and there is no follow-up, they might not be interested to participate in future times.

An example of the use of questionnaires to identify regulations possibly restricting competition, can be found in Norway. In 2017, the Norwegian Competition Authority (NCA) commissioned a survey among randomly chosen business managers in a business database. In the outset, the survey was intended to measure perceptions among business managers related to the intensity of competition in the markets, their knowledge about competition law and leniency as well as the NCA's work and perceived professionalism. The questionnaire is commissioned on a regular basis to capture changes over time, and to gauge the effects of specific advocacy measures. For the 2017 questionnaire, questions were added to the survey allowing business managers to express to what extent they were experiencing laws or regulations that hindered competition and if so, specify which provisions were causing this effect.

The questionnaire was sent to more than 17,000 business managers, of which 20 per cent replied. 3 out of 10 business managers indicated that to "a very large/large extent/to some extent" there were existing laws or regulations which restricted competition in their market. Almost 650 comments were submitted detailing said provisions. Among these, 45 per cent were related to how public procurement was being conducted. In this category, bundling of tenders excluding SME's, high costs of participating in tenders and tender requirements favouring some categories of bidders were among the examples mentioned. As for more broad regulations, several accreditations, authorizations, concessions and certification requirements were mentioned. .

Each feedback was considered in a first screening. The initial assessment provided more context giving basis for a preliminary assessment. The most relevant examples were analysed using the OECD Competition Assessment Toolkit as a reference, considering policy objectives, proportionality and to what extent less restricting policy objections are available.

## Contests

To obtain information regarding possible regulatory obstacles to competition, the Mexican Economic Competition Commission (COFECE), chose an innovative approach. In 2016-17 COFECE, together with

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<sup>14</sup> Presentation by Yuji Tanaka from the JFTC on "JFTC's Pro-active Approach – Survey Report on Mobile Market" at ICN AWG Teleseminar December 13, 2018.

the Ministry of Economy, the National Commission for Regulatory Improvement and the National Institute of Entrepreneurs, called for the “Award for identifying the most absurd regulatory obstacles to competition and entrepreneurship”<sup>15,16</sup>

The purpose of the contest was to expand COFECE’s knowledge of possible regulatory obstacles to competition, by learning from stakeholders how regulations in force were affecting their economic activities and their ability to compete. Another goal was to enhance awareness amongst regulators and businesses regarding the costs associated with anti-competitive regulation, in order to foster the design and implementation of better regulation that creates a favourable environment for entrepreneurship and business growth.

The contest was publicized through different channels, like radio announcements; a social media campaign; meetings with representatives of targeted business organizations; e-mailing campaigns (COFECE sent over 1,000 e-mails to more than 400 business organizations), as well as print materials (posters, flyers) submitted to other government agencies.

Submissions in the contest were evaluated according to:

- The importance of the affected market
- The impact on the functioning of the market
- The lack of justification for the regulation

The contest received 615 entries, of which 27% were related to municipal regulation, 26% to state-level provisions and 47% to federal frameworks. It is worth noting that 41% of the entries were related to services, 18% to trade and 13% to transport.

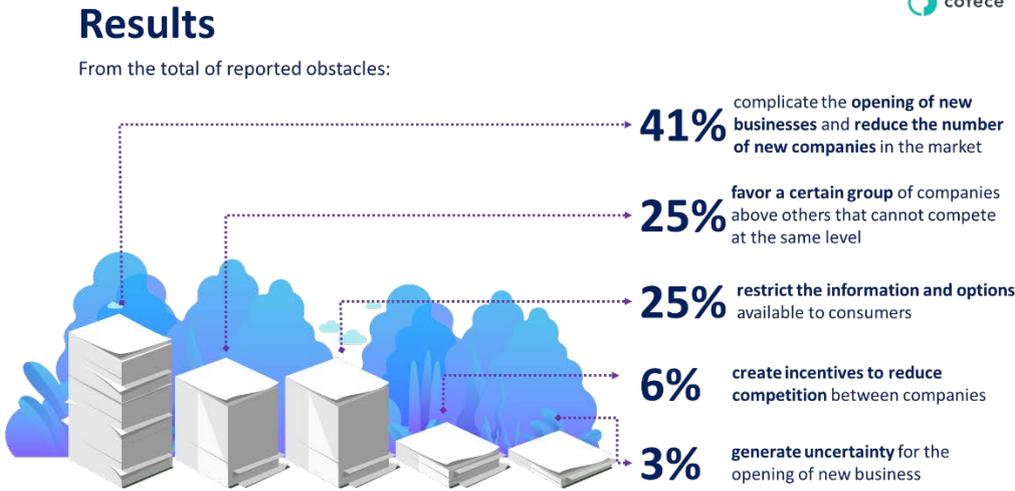


Figure 4. Summary of input from contest, by type of competition constraint (Source: COFECE: Presentation by María José Contreras at ICN AWG Workshop in Kyiv, 1 March 2019)

The contest’s first prize was awarded to the *State-Level Notary Laws*. These regulations were found to harm competition (i) by restricting the number of available notaries, (ii) enabling discretion for granting notary patents, (iii) establishing unjustified requirements, (iv) allowing price regulation,

<sup>15</sup> Source: COFECE: Presentation by María José Contreras at ICN AWG Workshop in Kyiv, 1 March 2019

<sup>16</sup> Memoir of the Award for Identifying the Most Absurd Regulatory Obstacle to Competition and Entrepreneurship. (Available in Spanish) at : [https://www.cofece.mx/wp-content/uploads/2017/11/Memoria\\_obstaculo.pdf](https://www.cofece.mx/wp-content/uploads/2017/11/Memoria_obstaculo.pdf)

market segmentation and mandatory membership and (v) granting chambers of notaries with faculties to limit competition.

Based on this experience, latter in 2018, COFECE issued an opinion to the state-level government of Veracruz noting that Public Notary Law draft raised several concerns regarding competition and free market access.<sup>17</sup>

The second prize was awarded to the *Transportation Regulation of 9 Municipalities of Nuevo León* which involved freight transport, a strategic activity for the competitiveness of any region and economic sector. In the 9 municipalities identified in the award, freight transport to subject to a system in which permits must be renewed every 30 days and there are no clear requirements on how permits are issued in the first place. COFECE's point of view is that these unclear requirements increase the production and distribution costs for several economic sectors, which is why the Commission issued an opinion<sup>18</sup> to the state-level government for carrying out the necessary reforms to transportation regulations for eliminating obstacles to competition.

According to the presentation by COFECE at the 2019 Advocacy Working Group Workshop in Kyiv, some lessons learned from conducting this contest were, on one hand, that is difficult for the public to differentiate between conducts involving an anticompetitive regulation, corruption and government inefficiencies; and, on the other hand, that the contest was useful for raising public awareness about anticompetitive regulations and allowed to identify several kinds of regulatory obstacles. However, there is still a problem since people do not know how to proceed when having information about regulations that could potentially hinder competition.

### Reporting tool

Many competition agencies have several tools and messaging services, accessible from their websites, enabling whistle-blowers to anonymously report anticompetitive conducts. The use of such tools goes hand-in-hand with awareness campaigns.

Some agencies use a similar tool for reporting regulatory obstacles to competition in the markets. This functionality allows individuals to report information regarding regulations which in their view hinders effective competition. An example from COFECE, Mexico is depicted in the figure below.<sup>19</sup>

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<sup>17</sup> Opinion available in Spanish at <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V87/1/4513633.pdf>

<sup>18</sup> Opinion available in Spanish at <https://www.cofece.mx/cfcresoluciones/docs/opiniones/v51/22/4432090.pdf>

<sup>19</sup> The website is available at: <https://www.cofece.mx/reporta-un-obstaculo-regulatorio/>

Figure 5. COFECE's reporting function for regulatory obstacles (Source: COFECE: Presentation by María José Contreras at ICN AWG Workshop in Kyiv, 1 March 2019)

Depending on the extent of the information provided by the report filed, the authority could ask for further details. This to increase the likelihood of having information that is sufficient, precise and reliable for a follow-up action by the agency. Also, to ensure that the portal works as an intended, awareness-raising campaigns should be considered, for instance, through the use of social media to inform and encourage informants to come forward with relevant information. It is also recommended, to ensure a continued interest among potential informants, that the information gathered is actually used and followed-up by the agency's advocacy work.

## Media

A media source is any resource that serves as a way for communicating to the general public. These sources, which can provide information on regulations that potentially restrict competition, can be in printed or digital form, like newspapers, magazines, broadcasts, internet and social media postings.

A particularly valuable source is business media/ industry magazines, which provide readers with sound information and insider news of the relevant industry. Another important source can be found in industry associations' newsletters.

The following steps will usually be conducted by and agency when there is information from the aforementioned sources that could signalize restrictions that are possibly restricting competition:

1. Initial assessment of whether the regulation mentioned in the media source may hinders effective competition in the market.
2. Consider if the information relates to a prioritized sector (e.g. economic importance and importance to consumers)
3. To what extent the concerning market is prioritized and the information indicates a potential competition problem regarding regulations. Meeting the regulator responsible for the area

of concern as well as with firms affected or industry associations can provide valuable background information.

4. Apply checklist in Figure 2 below.

## The competition assessment checklist

When candidate policies for assessment have been identified, the next step is to apply the checklist. The OECD Competition Assessment Checklist will be briefly presented below:

# COMPETITION ASSESSMENT CHECKLIST






Competition assessment should be conducted if a legal provision has any of the following effects:

<div style="background-color: #76b82a; color: white; padding: 5px; text-align: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">A</div> <p style="margin: 0;"><b>Limits the number or range of suppliers</b></p> <p style="margin: 5px 0 0 20px;">This is likely to be the case if the provision:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>A1</b> Grants exclusive rights for a supplier to provide goods or services</li> <li><input type="checkbox"/> <b>A2</b> Establishes a license, permit or authorisation process as a requirement of operation</li> <li><input type="checkbox"/> <b>A3</b> Limits the ability of some suppliers to provide a good or service</li> <li><input type="checkbox"/> <b>A4</b> Significantly raises cost of entry or exit by a supplier</li> <li><input type="checkbox"/> <b>A5</b> Creates a geographical barrier for companies to supply goods, services or labour, or invest capital</li> </ul>	<div style="background-color: #76b82a; color: white; padding: 5px; text-align: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">B</div> <p style="margin: 0;"><b>Limits the ability of suppliers to compete</b></p> <p style="margin: 5px 0 0 20px;">This is likely to be the case if the provision:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>B1</b> Limits sellers' ability to set prices for goods or services</li> <li><input type="checkbox"/> <b>B2</b> Limits freedom of suppliers to advertise or market their goods or services</li> <li><input type="checkbox"/> <b>B3</b> Sets standards for product quality that provide an advantage to some suppliers over others, or are above the level that some well-informed customers would choose</li> <li><input type="checkbox"/> <b>B4</b> Significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)</li> </ul>
<div style="background-color: #76b82a; color: white; padding: 5px; text-align: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">C</div> <p style="margin: 0;"><b>Reduces the incentive of suppliers to compete</b></p> <p style="margin: 5px 0 0 20px;">This may be the case if the provision:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>C1</b> Creates a self-regulatory or co-regulatory regime</li> <li><input type="checkbox"/> <b>C2</b> Requires or encourages information on supplier outputs, prices, sales or costs to be published</li> <li><input type="checkbox"/> <b>C3</b> Exempts the activity of a particular industry, or group of suppliers, from the operation of general competition law</li> </ul>	<div style="background-color: #76b82a; color: white; padding: 5px; text-align: center; font-weight: bold; font-size: 24px; margin-bottom: 5px;">D</div> <p style="margin: 0;"><b>Limits the choices and information available to customers</b></p> <p style="margin: 5px 0 0 20px;">This may be the case if the provision:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>D1</b> Limits the ability of consumers to decide from whom they purchase</li> <li><input type="checkbox"/> <b>D2</b> Reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers</li> <li><input type="checkbox"/> <b>D3</b> Fundamentally changes information required by buyers to shop effectively</li> </ul>

Figure 6. Competition Assessment Checklist (Source: <https://www.oecd.org/competition/assessment-toolkit.htm>)



## Concluding comments

A competitive environment for economic activities is created by the framework that businesses operate within. This framework includes eg. the set of laws, regulations and policies that firms must relate to and comply with.

Advocating a competition-friendly legal and regulatory environment is an important task for competition agencies. Being well placed to assess how existing and proposed laws and legislation may restrict competition, competition agencies can provide valuable input to policymakers by evaluating the competition impact of a given policy measure and making specific recommendations to help mitigate those effects.

However, the amount of laws and regulations that constitute the framework for business is overwhelming. How can an agency identify those regulations that may hinder the efficient functioning of competition in markets?

The approaches to identify candidate provisions for competition assessment varies from the least resource-intensive based on e.g. assessing and responding to changes in existing or proposed new laws and regulations in a public hearing, to more extensive broad screening. The first approach is reactive, but there is a risk that many regulations potentially restricting competition never is brought to the agency's attention. On the other end of the scale, screening will likely identify many candidates for competition assessment, but the approach is very resource consuming, and out of reach for many smaller agencies.

Building on input from AWG members, this report presents alternative and innovative ways to identify rules and regulations that may hinder the efficient functioning of competition in markets. The emphasis has in particular been to identify *innovative* approaches.

In addition to the traditional approaches based on *public hearings*, *screenings* and *consultations* with eg. the business community, examples presented in the report include the use of *questionnaires* - which has proven to be a very effective to identify laws and regulations restricting competition – and *contests*, for instance an award for “identifying the most absurd regulatory obstacles to competition and entrepreneurship.

Some agencies also use *reporting tools* on their websites, accessible for the general public allowing individuals to report information regarding regulations which in their view hinders effective competition. This tool is similar to those enabling whistle-blowers to anonymously report anticompetitive conducts.

The report synthesizes members' input from a AWG teleseminar in 2018, the AWG workshop in Kyiv, Ukraine in 2019 and an ICN Annual conference AWG break-out in 2019, and complements previous work by the AWG on Competition assessment, i.e. Recommended Practices on Competition Assessment (2014) and Framework of Competition Assessment Regimes (2015). In addition to member input, this report has also benefitted from OECD work on competition assessment.